

**ISSUE DATE: January 16, 2001**

**DOCKET NO. P-3009, 3052, 5096, 421, 3017/PA-99-1192**

**ORDER DECLINING TO OPEN INVESTIGATION**

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayer**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

**In the Matter of the Merger of the Parent  
Corporations of Qwest Communications  
Corporation, LCI International Telecom  
Corp., USLD Communications, Inc.,  
Phoenix Network, Inc., and U S WEST  
Communications, Inc.**

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**PROCEDURAL HISTORY**

**On June 28, 2000, the Commission issued an Order in this case approving a proposed merger between Qwest Communications International Inc. and U S WEST, Inc. The Order approved the proposed merger subject to the terms and conditions set forth in two settlement agreements, one between the merging companies and Cady Telemanagement, Inc., and the other between the merging companies and the two state agencies that represent the public in Commission proceedings, the Department of Commerce and the Residential and Small Business Utilities Division of the Office of the Attorney General.**

**The Northwestern Bell/U S WEST Retirees Association (the Association) had intervened in the case and had asked the Commission to take one of two courses of action: (1) order U S WEST to negotiate with the Association on the future of pension and non-pension post-retirement benefits; or (2) issue a detailed Order restricting the Company's actions in regard to the U S WEST pension plan.**

**The Commission declined to order negotiations between the Association and the merging companies, because it saw no reasonable likelihood that further negotiations would produce an agreement. The Commission also declined to order the other relief sought by the Association, finding that that relief was preempted by the federal Employee Retirement Income Security Act.**

**The Commission did, however, state that it expected Qwest/U S WEST to meet its obligations to its retirees, and it required the merged company to give the Association quarterly reports on the company's management of the pension fund. The surviving company, Qwest, sent its first report to the Association on September 30, 2000.**

**On October 9, 2000, the Association filed comments claiming that the report itself failed to**

comply with the Commission's Order, that its contents suggested that the Company was violating specific Order requirements, and that its contents suggested that the Company may have misled the Commission in regard to its plans for the U S WEST pension fund. The Association asked the Commission to open an investigation into these claims.

On October 23, 2000, the Commission issued a Notice of Request for Comments on the Association's claims. On November 13, 2000, Qwest filed comments denying the Association's claims. On November 22, 2000, the Association filed reply comments.

On January 4, 2001, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. The Requirements of the June 28 Order**

The requirements of the June 28, 2000 merger Order that relate to the Association's ' concerns are set forth below:

The Commission informs petitioners [U S WEST and Qwest] that the Commission expects U S WEST and Qwest to continue to honor the commitments made by U S WEST to the retirees and to assure that U S WEST retirees' earned pension benefits and health plan benefits will not be reduced. The Commission also expects that pension assets will be administered lawfully.

U S WEST/Qwest shall provide substantial information to the Retirees Association on the management of the pension fund for purposes of addressing future concerns retirees may have, including the concerns listed below. The merged company shall initially provide this information within 90 days of closing and shall provide this information quarterly thereafter until all of the issues have been resolved:

- whether the pension plan will be terminated;
- whether the pension plan will be expanded to include Qwest employees, and if so, the companies' plans for funding that expansion;
- whether the companies intend to continue to fund non-pension benefits using the pension surplus;
- whether the pension plan is covered by the Pension Benefit Guarantee Corporation, and what type of legal framework and protections are provided;
- how benefits will not decrease, and how those funds are guaranteed by the pension plan;
- how the companies plan to handle cost-of-living adjustments moving forward.

**ORDER ACCEPTING SETTLEMENT AGREEMENTS AND APPROVING  
MERGER SUBJECT TO CONDITIONS, Ordering Paragraphs 5 and 6.**

## **II. The Issues**

The Association requests a Commission investigation on the basis of the following claims:

- (1) Qwest's September 30 letter/report does not provide all the information required under the June 28, 2000 Order.**
- (2) The decision to include Qwest employees in the former U S WEST pension plan and to use the plan's trust to fund their benefits violates commitments made to U S WEST retirees, in violation of the Commission's June 28 Order.**
- (3) The decision not to provide a cost-of-living adjustment to pension plan participants violates commitments made to U S WEST retirees, in violation of the Commission's June 28 Order.**
- (4) The timing of Qwest's decision to include Qwest employees in the former U S WEST pension plan suggests that Qwest may have misrepresented its intentions to the Commission in June 2000, when it assured the Commission that it had made no decisions regarding the pension plan.**

## **III. Commission Action**

### **A. Summary of Commission Action**

The Commission finds that Qwest is in substantial compliance with the information requirements of the June 28, 2000 merger Order. The Commission reiterates its findings in that Order that it is preempted under federal law from determining who can join the U S WEST pension plan and from ordering cost-of-living adjustments for plan participants. The Commission finds no basis for opening an investigation into when Qwest decided to extend the U S WEST pension plan to include all Qwest employees.

These actions are explained below.

### **B. The Company Has Supplied the Information Required under the June 28 Order.**

The information requirements set forth in ordering paragraph 5 of the June 28 Order and the Company's responses in its September 30 letter/report compare as follows:

- ***Information Required:*** whether the pension plan will be terminated
- ***Response:*** Qwest has no plans to terminate the U S WEST pension plan.

- ***Information Required:*** whether the pension plan will be expanded to include Qwest employees, and if so, the companies' plans for funding that expansion –
- ***Response:*** All Qwest employees will be eligible to participate in the U S WEST pension plan as of January 1, 2001; the Company will fund Qwest employees' pension benefits from the pension plan trust.
  
- ***Information Required:*** whether the companies intend to continue to fund non-pension benefits using the pension surplus –
- ***Response:*** The Company will continue to provide employee and retiree benefits from the pension plan as permitted by law, including retiree health care as permitted under Internal Revenue Code Section 420.
  
- ***Information Required:*** whether the pension plan is covered by the Pension Benefit Guarantee Corporation, and what type of legal framework and protections are provided –
- ***Response:*** The pension plan is covered by the federal Pension Benefit Guarantee Corporation and in the unlikely event of insolvency, that agency would pay participants' pensions under whatever maximums were then in effect.
  
- ***Information Required:*** how benefits will not decrease, and how those funds are guaranteed by the pension plan –
- ***Response:*** The Company will never reduce earned pension benefits for retirees, their eligible spouses, former employees with vested pension benefits, or their eligible spouses.
  
- ***Information Required:*** how the companies plan to handle cost-of-living adjustments moving forward –
- ***Response:*** The plan does not require, and the Company does not intend to provide, a cost-of-living adjustment to plan participants.

The Commission finds that Qwest has addressed each issue it was required to address under the June 28 merger Order and that the Company is in substantial compliance with the information requirements of that Order.

**C. Including Qwest Employees in the Pension Plan and Failing to Grant Cost-of-Living Pension Increases Do Not Violate the June 28 Merger Order.**

When the Association intervened in the merger docket, one of the remedies they sought was an Order either prohibiting Qwest from expanding the pension plan to include non-U S WEST employees or requiring Qwest to provide “regular, automatic, nondiscretionary

increases in pension benefits.” The Commission denied this relief on grounds that it was preempted under the federal Employee Retirement Income Security Act (ERISA):

**The relief sought by the Retirees Association is precisely the kind of state action that is normally preempted by ERISA. An order of this Commission mandating cost-of-living increases for Minnesota retirees, requiring the company to create a separate pension plan for pre-merger Minnesota retirees/employees, or designating any portion of the pension fund surplus for non-pension benefits, would directly, immediately, and substantially affect the company’s management of its ERISA plan.**

**Order at 11.**

**(The Commission went on to examine possible exceptions to ERISA preemption, determined that none of them applied, and concluded that it could not grant the requested relief. Order at 11-12.)**

**The Commission reiterates its preemption findings in the June 28 merger Order and finds that that Order neither prohibited Qwest from including Qwest employees in the pension plan nor required Qwest to institute cost-of-living adjustments for plan participants. The Commission concludes that Qwest has not violated the Order by including Qwest employees in the plan or by declining to provide cost-of-living adjustments.**

**D. The Evidence Does Not Warrant an Investigation into Qwest’s Truthfulness at the Merger Hearing.**

**The Association argues that the timing of Qwest’s decision to include all Qwest employees in the U S WEST pension plan, which Qwest places within the week of August 21, 2000, suggests that Qwest may have been less than truthful when it assured the Commission on June 6 that it had made no final decisions on the pension fund. The Association pointed out that adding thousands of employees to a pension plan is complex both legally and logistically and that the groundwork for that decision must have been laid significantly earlier than August 21.**

**The Commission assumes that Qwest was engaged in careful analysis and active consideration of all options for dealing with the U S WEST pension plan well in advance of August 21. At the June 6 hearing the Company did not deny this. It did deny, however, that it had made a final decision on how to deal with the plan. It also emphasized that it was committed to full compliance with the ERISA statute at all points and to full disclosure to employees and retirees once final decisions had been made.**

**The Association has produced no evidence that a final decision had in fact been made on or before June 6, the date of the final merger hearing, or on or before June 28, the date the Order based on that hearing was issued. Qwest, on the other hand, has produced a**

statement from an executive vice president who was personally involved in making the decision; he unequivocally stated that the final decision was made in August. At hearing the Company also produced its chief pension benefits attorney, who stated on the record and on the basis of her personal knowledge that no final decision had been made before the week of August 21.

It goes without saying that the Commission views the integrity of its process as paramount. On these facts, however, there is no reason to believe that that integrity has been compromised. The Commission will therefore decline to open the investigation requested by the Association.

The Commission will so order.

### **ORDER**

1. The petition of the U S WEST/Northwestern Bell Retirees Association for an investigation into Qwest's compliance with the Commission's June 28, 2000 Order in this docket is hereby denied.
2. This Order shall become effective immediately.

**BY ORDER OF THE COMMISSION**

**Burl W. Haar**  
Executive Secretary

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